

**Penn York Manufacturing, Inc. and Charles Pond  
and Michael Kinney. Cases 4-CA-11605 and  
4-CA-11615**

May 5, 1981

**DECISION AND ORDER**

Upon charges filed on November 17 and 19, 1980, by Charles Pond and Michael Kinney, respectively, and duly served on Penn York Manufacturing, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 4, issued a consolidated complaint on December 24, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charges and consolidated complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent failed to file an answer to the consolidated complaint.

On February 17, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment and for the issuance of a Decision and Order, with exhibits attached, based on Respondent's failure to file an answer as required by the National Labor Relations Board Rules and Regulations, Series 8, as amended. Subsequently, on February 23, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause, and, accordingly, the allegations of the consolidated complaint stand uncontroverted.

Upon the entire record in this proceeding, the Board makes the following:

**Ruling on the Motion for Summary Judgment**

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the

answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The consolidated complaint and notice of hearing served on Respondent specifically stated that unless an answer to the complaint was filed within 10 days from the service thereof "all of the allegations in the Consolidated Complaint shall be deemed to be admitted to be true and may be so found by the Board." As noted above, Respondent has not filed an answer to the consolidated complaint, nor did it respond to the Notice To Show Cause. No good cause to the contrary having been shown, in accordance with the rules set forth above, the allegations of the consolidated complaint are deemed to be admitted and are found to be true.<sup>1</sup> Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

**FINDINGS OF FACT**

**I. THE BUSINESS OF RESPONDENT**

Penn York Manufacturing, Inc., is and has been at all times material herein, a Pennsylvania corporation with its sole place of business at 706 Desmond Street, Sayre, Pennsylvania, where it is engaged in the machining of automobile and farming machine parts. During the 12-month period preceding the issuance of the consolidated complaint, Respondent, in the course and conduct of its business operations, sold and shipped products valued in excess of \$50,000 directly to points outside the Commonwealth of Pennsylvania.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

<sup>1</sup> The consolidated complaint issued on December 24, 1980. In the Motion for Summary Judgment, the General Counsel states that Respondent failed to file an answer to the consolidated complaint, and that the time for filing such an answer under the Board's Rules and Regulations expired on January 6, 1981. The return post office receipt evidencing service of the consolidated complaint, attached to the Motion for Summary Judgment as Exh. 4, indicates that the consolidated complaint was delivered on January 12, 1981. However, Respondent never filed an answer to the consolidated complaint. Nor did Respondent respond to the Notice To Show Cause. It is clear that, no matter what date of service is used to compute the time for filing an answer to the consolidated complaint, Respondent has failed to file a timely answer. Further, the General Counsel's Motion for Summary Judgment was filed well after any appropriate time for the filing of an answer, and Respondent did not respond to the Notice To Show Cause. Thus, Respondent has failed to show good or other cause as to why the allegations of the complaint should not be deemed to be true, and they are deemed to be admitted and found to be true.

## II. THE UNFAIR LABOR PRACTICES

On or about November 10, 1980, Respondent, through Solomon Eschenberg, its foreman and a supervisor within the meaning of Section 2(11) of the Act and an agent within the meaning of Section 2(13) of the Act, discharged its employees Charles Pond and Michael Kinney and has since that time failed and refused to reinstate said employees to their former or substantially equivalent positions of employment because said employees engaged in a concerted refusal to work on November 8, 1980.

We find, as alleged in the consolidated complaint, that by the aforesaid conduct found above Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them under Section 7 of the Act, and thereby has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) of the Act.

## III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section II, above, occurring in connection with operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## IV. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act, we shall order that it cease and desist therefrom, and that it take certain affirmative action as set forth below to effectuate the purposes and policies of the Act.

We shall order Respondent to offer Charles Pond and Michael Kinney immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges previously enjoyed, and to make them whole for any loss of earnings they may have suffered as a result of the discrimination against them. Backpay shall be based upon the earnings they normally would have received from the date of their discharge to the date of a valid offer of reinstatement, less net earnings during such period. Backpay and interest are to be computed in accordance with the formulas used in *F. W. Wool-*

*worth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).<sup>2</sup>

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

## CONCLUSIONS OF LAW

1. Penn York Manufacturing, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. By the acts described in section II, above, Respondent has discharged and failed and refused to reinstate employees Charles Pond and Michael Kinney because they engaged in a concerted refusal to work, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Penn York Manufacturing, Inc., Sayre, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging employees, and failing and refusing to reinstate employees to their former or substantially equivalent positions of employment, because they engaged in concerted activities protected by the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer Charles Pond and Michael Kinney immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

(b) Make Charles Pond and Michael Kinney whole for any loss of earnings they may have suffered due to the discrimination practiced against them in the manner set forth in the section of this Decision entitled "The Remedy."

<sup>2</sup> See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). With respect to the backpay involved, Member Jenkins would compute the interest in accordance with the formula set forth in his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at it Sayre, Pennsylvania, facility copies of the attached notice marked "Appendix."<sup>3</sup> Copies of said notice, on forms provided by the Regional Director for Region 4, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 4, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

<sup>3</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Act gives all employees these rights:

- To engage in self-organization
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
- To refrain from the exercise of any or all such activities.

WE WILL NOT discharge and fail and refuse to reinstate employees to their former or substantially equivalent positions of employment because they engaged in concerted activities protected by the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer Charles Pond and Michael Kinney immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or any other rights and privileges previously enjoyed, and WE WILL make them whole for any loss of earnings they may have suffered due to the discrimination practiced against them by paying each of them a sum equal to what he would have earned, less any net interim earnings, plus interest.

PENN YORK MANUFACTURING, INC.